

COMMENT/ARGUMENT

Claim 12 has been amended, and claims 12-22 remain in the case.

The Examiner has rejected claims 15, 18, and 21 as improperly indicating the status of amendment of the claim. The status indicator on said claims has been changed to “previously amended” to correct any deficiency.

The Examiner has rejected claim 12 under 112. Claim 12 has been amended to more succinctly indicate the method of the claimed invention. More particularly, step “T” has been amended to read “utilizing said portable computer to indicate the location and route of the vending machines, while conveying said pulled inventory from said service vehicle to said vending machines” to better clarify what is meant by “conveying said portable computer with said pulled inventory away from said service vehicle.. Vending machines” as cited by the Examiner.

Likewise, step “K” has been amended to better clarify the adjustment for product inventory or cash box changes from the period of reception of the vending stream data at the service vehicle to the servicing of the vehicle.

The Examiner continues to recite Beard ‘800 in view of Sadam ‘292 and Varga as obvious under 103(a). Reconsideration is respectfully requested for the following reasons, to wit:

The present claims 12, 14, 17, and 19 specify transmission “utilizing monodirectional RF transmission only” and not bi-directional. Further, claim 22 specifies (step d):

“communicating said transmission string to a reception area **consisting of** the step of transmitting, utilizing mono-directional RF transmission said transmission string to a reception area in the vicinity of said vending machine”

Clearly claims 12-21 very specifically define a system operating relying solely upon monodirectional or one way communication from the vending machine(s) to the service vehicle. Claim 21, utilizing the “consisting of” term in the claims, specifically limits the application of the claim the mono-directional RF transmission methodology as set forth therein.

The Examiners have asserted in prior office actions that two way RF communications

encompasses mono-directional RF transmissions, which simply is not the case, as the present system relies upon a specific methodology for the one way transmission of the data to a predetermined, local reception area in a timely and up to date fashion, which is not taught, contemplated, or otherwise suggested in the prior art, whether alone or combined.

Indeed, the prior art cited systems uniformly contemplate and specifically teach data transmission techniques which by their very nature require two way transmission. Even the so-called one-way data transmission cited in Varga in paragraphs 18 and 48 would require a handshake to convey the data, which requires two way transmission. The cited paragraphs of Varga are as follows:

“[0018] Among the principal features of the invention are electronic monitoring means coupled to monitoring points within a vending machine, capable of identifying critical characteristics of said machine's operations, including cash received and numbers of various goods dispensed and fault conditions; means for assembling such data and translating it into a standard format for transmission to a remote location; means for transmitting such formatted data to a remote location, (in one embodiment, using one-way communications); and a method for processing the data to enable efficient restocking.”

“[0048] The standard reporting format data is combined with the unique identifier (80) associated with the vending machine, and communicated via communications means (200), such as a modem or other transmitter, to a remote processing center (300) using any of several means, such as radio transmission or modem transmission over telephone lines.”

It is respectfully asserted that **neither of the above two paragraphs are enabling** to one with ordinary skill in the art as to how one is to modify the obvious bi-directional requirement of the Vargo device and provide a similar operation in a one-way system. Paragraph 18, which is in a brief “summary of the invention”, simply mentions “in one embodiment, using one-way communications”. Certainly the Examiner's cited paragraph 0048 does not enable one to practice such a “one way” embodiment; in fact, there is no mention of even the word “one-way” or the equivalent in said paragraph. In any event, no where does Vargo enable one to practice the unique

system claimed in the present application.¹

It is thus clear that the Examiner has not provided evidence that it is conventional in the art to provide a **true monodirectional data transfer** in the method claimed in the present invention, which is required under 103 under KSR Intl v Teleflex, Inc 127 S Ct 1727, 82 USPQ2d 1385 (2007); see also Ex Parte Owlett, BPAI Appeal 20070644, Decided June 20, 2007.²

As previously discussed, even where the prior art may off handedly reference that the conveyance of data be “one way” in some capacity, such a reference is with regard to the conveyance of certain data as a component in a sequence of transactions, and not a reference of the means of communication, which as shown requires at the very least a handshake to establish and terminate communication, which in and of itself is two way in its operation as previously discussed. It has been previously established that such two way operation is substantially more complex and costly to implement than a pure monodirectional data stream, although a fully monodirectional conveyance of data has its own problems.

We must reiterate that, in a pure monodirectional transmission from a transmitter to a receiver (as in the present case), the transmitter in effect transmits blind, that is, the transmitter has have no capacity to discern whether the transmission has been received.

In contrast to the cited prior art, the claims have been amended to emphasize that the present invention provides a one-way RF communication from the vending machine(s) to a predesignated reception area in such a manner so as to provide continuously updated data streams for each machine, such that said data streams are conveyed to said designated reception area in approximate

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Paragraph 0048 references a “network radio modem” earlier referenced in paragraph 0039, which again is in fact not a one-way communication in the manner taught and claimed in the present application. As previously discussed, as Varga references a “network radio modem” as the means of conveying the “one way” data, it is no different than the previously cited Schwartzenruber, which likewise utilized a modem, and which likewise was not in fact a one-way channel of communications as referenced when applicant claims a “monodirectional data transmission”. Thus, while Varga may utilize the term “one way” in the specification, there is in fact no enablement of a truly “one way” system which would allow one of ordinary skill in the art to practice the invention without undue experimentation, which is the standard which must be applied.

² “We determine that the Examiner has not provided a sufficient reason or explicit analysis of why the disclosures of the references should be combined.” Ex Parte Erkey et al BPAI Appeal 20071375, Decided May 11, 2007.

real time even where the transmission is “blind”.

As previously indicated, this is accomplished in the present invention by continuously repeating over time the steps of:

- a) polling said machine, compiling sales and cash flow data, providing a data stream;
- b) repeatedly transmitting said data stream, **utilizing monodirectional RF transmission only**, providing a continuous transmission within a reception area;

Thus, the predesignated reception area has beamed to it a continuously data stream which can be received at any time the moment service vehicle is in the reception area, said received data stream updated in approximate real time, so that the operator can be assured that the received data is accurate at the time of reception.

As previously iterated, the present invention does not require subscription fees, costly equipment, or even an FCC license, providing a system which is substantially less expensive to initiate and maintain than prior art systems.

As previously argued: “Further, as indicated in Claim 12, the present invention provides a system which utilizes a portable computer configured to receive the data from the receiver at the service vehicle, compile same, and communicate to the operator the relevant data to pull the inventory at the service vehicle. The portable computer is then utilized by the operator during the process of servicing the vending machines as a means to locate and provide the optimal order of servicing the machines based upon location and the inventory requirements. Finally, the portable computer is utilized to “balance out” the vending machine data at the vending machine location during the service process, which adjusted vending machine data is then conveyed back to the base office to provide the most accurate data available on the machines. This partnering of a portable computer with the above process is likewise unique and not contemplated in the cited prior art.

Also as discussed, the claims set forth a specific protocol to deal with transactions which occurred during the interval following receipt of the vending data but before servicing of the machines. These steps, if followed, allow the user to compensate for these changes in inventory and

cash box, and provide an adjusted data which can ultimately be conveyed, for example via the portable computer, to the base office.

The above steps (as well as the other claims) were developed to compensate for the difficulties in dealing with a purely one way, “blind” transfer of data from the transmitter to the reception area, and is not contemplated, suggested, or otherwise taught, alone or in combination by the cited prior art. Yes, the prior art does anticipate use of RF to convey vending machine data, but this has been acknowledged even in the application as originally filed. What sets the present invention apart from the prior art is the ability to provide an accurate and highly efficient system for servicing vending machines utilizing the monodirectional transmission (only) via a unique, defined series of important steps which compensate for the difficulties of a monodirectional system and which, and which if not followed, would result in an unworkable system. The claimed invention is thus much more than the simple one way transmission of data.

In combination, it is believed that the claimed method of the present invention provides a unique, innovative and accurate system for servicing vending machine(s) from a service vehicle in a manner which requires much less equipment investment than prior art systems, and with no subscription or service plan requirements for conveying the data.”

Unlike Sedam, Beard or Varga, the mono-directional transmission technique detailed in the claims of the present invention, combined with the other steps enumerated in the method claims, teaches a system wherein the transmitter has been configured to in effect transmit “blind” (i.e., with no information or guidance as to status of the receiver), in a pure monodirectional transmission from a transmitter to a receiver, the transmitter in effect transmits blind, that is, the transmitter has no capacity to discern whether the transmission has been received.

In the present invention, the claims have been amended to emphasize that the present invention provides a one-way RF communication from the vending machine(s) to a predesignated reception area in such a manner as to provide continuously updated data streams for each machine, such that said data streams are conveyed to said designated reception area in approximate real time even where the transmission is “blind”.

As previously indicated, the present invention is able to accomplish the technique of blindly transmitting via monodirectional RF data stream by continuously repeating the steps of:

a) polling each vending machine, compiling sales and cash flow data, so as to provide a data stream;

b) repeatedly transmitting said data stream, **utilizing monodirectional RF transmission only**, providing a transmission within a reception area;

The above is accomplished so as to beam (or transmit) to a predesignated reception area a data stream which is continuously present in the reception area and thus can be received at any time the moment service vehicle is in the reception area, and said received data stream is updated in approximate real time, so that the operator can be assured that the received data is accurate at the time of reception”.

As previously indicated, Sedam, Varga, Beard et al, all require feedback in some form from the receiver, either in the form of a transceiver, modem, or the like to function. While such an approach allows for transmission of data only when requested, as well as verification of receipt, the requisite equipment, complexity and cost is greatly increased when compared to the present invention.³

As previously discussed, one could not simply cut off one channel of the bi-directional communications of Sedam, Beard, or Varga et al and indicate that they would work the same as the present invention, or otherwise contemplate the present invention. Such is clearly not the case. As discussed above, there are several steps in the present invention not present or discussed in the cited prior art. The present invention not only relates to a single channel communication path from the vending machine(s) to the service vehicle only, the invention **further include specific methodology as set forth in the claims** and iterated above which is not

³ “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” In re Kahn 441 F3rd 977, 988 (CA Fed 2006) - (Cited with approval in KSR).

contemplate or suggested, alone or in combination, by the cited prior art.

It is reiterated that in the earlier filings, the applicant has provided detailed declarations⁴ of non-obvious by credible experts in the industry (including Mr. Tim Sanford⁵, editor-in-chief of the nationally recognized trade publication VENDING TIMES) relating to the inventive claimed features of the present system, and the prior art has clearly failed to teach or anticipate the combination of the claims as set forth in the present invention, for reasons discussed above.

Lastly, as previously indicated, “the Federal Circuit has made it very clear that secondary considerations must be considered when they are present, and are given equal weight to the primary consideration. WL Gore & Assoc v. Garlock, Inc., 721 F2d 1540, 1555, 220 USPQ 303, 314 (Fed Cir 1983) cert denied 469 US 851 (1984). Not only has there been presented declarations of non-obviousness from experts, but there has been a clear showing of commercial success, and detailed declarations establishing the nexus between the commercial success and the invention, which must be given serious consideration. Demaco Corp v F Von Langsdorff Licensing Ltd 851 F2d at 1392, 7 USPQ2 at 126 (Fed Cir 1988), cert den 488 US 956 (1988).

Further, it is clear that the prior art has not contemplated the one-way system of the present invention, which again is more than simply “blind” transmission of data, but rather the complete protocol wherein there are multiple steps to compensate for the shortcomings of having to deal with a pure one way transmission of data, yet provide accurate and timely information for servicing and reporting to the base office. Such is the essence of the present invention which is not contemplated by the cited prior art.

Accordingly, the claims are deserving of patent protection, and same is respectfully requested.

As earlier indicated, in order for a claim to be obvious under the prior art under 103,

⁴ It is again respectfully reiterated that these declarations cannot be ignored, but must be overcome by the Examiner with clearly relevant prior art teachings which on their face anticipate the claimed invention, with a 1) motivation to combine; and an 2) expectation of success, neither of which has been shown with the references cited.

⁵ See 1.312 Affidavit Dated 27 September 2004, filed in the present case 29 September 2004.

there must have been some explicit or implicit suggestion or motivation in the prior art to combine, substitute or otherwise modify the prior art in a way to produce the claimed invention. The “differences between the subject matter to be patented and the prior art” must be such as to render the “subject matter as a whole” obvious. As earlier indicated, it is inappropriate to use hindsight guided by the applicants disclosure. In the present case, the Examiner admits the invention of applicant is novel, that the product under the invention has “strong evidence” of commercial success.

Brown & Williamson Tobacco Corp v. Phillip Morris, Inc 229 F3d 1120, 56 USPQ2d 1456 (fed Cir 2000), reminds us that a showing of obviousness requires a motivation or suggestion to combine or modify prior art references, coupled with a reasonable expectation of success, and that the initial burden is on the examiner to make a rebuttable prima facie case of obviousness based upon the prior art. In re Rinehart 531 F2d 1048, 189 USPQ 143 (CCPA 1976).

Applicant respectfully reminds the Examiner that the applicant for a patent has no burden to show proof of non-obviousness until a prima facie case has been made by the examiner. **Neither Sedam, Beard, nor Varga, alone or in combination, show or anticipate the claimed invention, nor has there a showing of motivation or suggestion of combination of these references to teach the invention as claimed in the present application, which contemplates a much different system, requiring different equipment and technique than the prior art.”**

Thus, on reconsideration, it is respectfully submitted that the present claims should be allowed as being patentable under 35 U.S.C. 103.

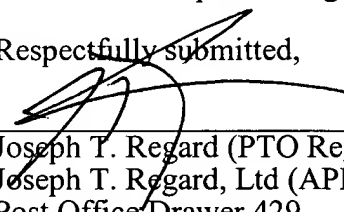
If additional issues remain, and the Examiner is of the opinion that same could be resolved by telephone amendment, the undersigned respectfully requests same at (985) 845-0000.

Conditional Request for Constructive Assistance

Applicant has amended the specification and claims of the present application so as to provide a proper, definite and novel structure which is also believed to be unobvious. If the Examiner is of the opinion that the application is still not in full condition for allowance, the undersigned respectfully requests the constructive assistance and suggestions of the Examiner

pursuant to MPEP Section 707.03(d) and 707.07(j), so that the undersigned can place the application in allowable condition as soon as possible, and without the need for further proceedings.

Respectfully submitted,



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